



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 22, 1996

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR96-1236

Dear Mr. Durfee:

Your predecessor has asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 27811.

The Harris County District Attorney (the "district attorney") received a request for the district attorney's files on cause numbers 609,629 and 657,712, styled *State v. Christopher Wayne Cox*. You state that the district attorney will release information that was previously filed with the clerk of the criminal trial court. However, you claim that the remainder of the requested information is excepted from disclosure by sections 552.101, 552.103, and 552.108 of the Government Code.

The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The documents submitted to this office include medical records access to which is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA.

Additionally, mental health records are addressed in section 611.002 of the Health and Safety Code. Section 611.002(a) of the Health and Safety Code provides:

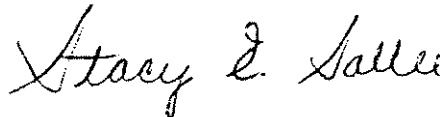
(a) Communications between a patient and a professional,¹ and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential. [Footnote added.]

These records may be disclosed only as provided in section 611.002(b). We have marked documents that appear to be either medical records or mental health records for your convenience.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.² *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Here, as the offense is aggravated sexual assault of a child, we conclude that front page offense report information is excepted from disclosure by common-law privacy. Therefore, we conclude that section 552.108 of the Government Code excepts the remainder of the requested information from required public disclosure and common-law privacy, as incorporated by section 552.101 of the Government Code, excepts first page offense report information from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

¹Section 611.001 of the Health and Safety Code defines "professional" in part as "a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder."

²The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

Ref.: ID# 27811

Enclosures: Marked documents

cc: Mr. David Person
Kahn & Maieron, P.C.
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Houston, Texas 77007
(w/o enclosures)